

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

NEXON KOREA CORPORATION,
a Korean Corporation,

Plaintiff,

v.

IRONMACE CO., LTD., a Korean
Corporation; JU-HYUN CHOI, individually;
and TERENCE SEUNGHA PARK,
individually,

Defendants.

Case No. 2:23-cv-00576-MLP

**DECLARATION OF
TERENCE SEUNGHA PARK**

[Defendants' Motion To Dismiss On
Grounds Of *Forum Non Conveniens*,
Declarations of Ju-Hyun Choi, Eung
Jun Jeon and Aaron J. Moss in Support
and [Proposed] Order Filed
Concurrently]

DECLARATION OF TERENCE SEUNGHA PARK
No. 2:23-CV-00576-MLP
43223-00002/4845530.1

**GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP**
2049 Century Park East, Suite 2600
Los Angeles, California 90067
(310) 553-3610

DECLARATION OF TERENCE SEUNGHA PARK

I, Terence Seungha Park, hereby declare as follows:

INTRODUCTION

1. I am the Chief Executive Officer of Ironmace Co., Ltd. (“Ironmace”). I am submitting this declaration in support of the Motion to Dismiss for Forum Non Conveniens filed by myself, Ironmace, and Ju-Hyun Choi in the above-captioned lawsuit (the “U.S. Litigation”). The facts stated herein are known to me personally, and if called as a witness, I could and would testify competently thereto.

PERSONAL AND PROFESSIONAL BACKGROUND

2. I am a permanent resident of South Korea. While I was born in the United States, in Los Angeles, California, I moved to South Korea in 2005. I have been living and working exclusively in Korea ever since. I am married to a Korean citizen and have two children who were both born in Korea.

3. I have never owned real property in the United States, and I have never visited the state of Washington. I do not have a residence in Irvine, California. I currently have no plans to visit the United States in the foreseeable future.

4. I have worked in the videogame industry my entire career. I started as a graphic designer and community manager in the early 2000s and over the course of my career have worked as a game designer for numerous different games and gaming studios.

5. In 2010, I was a founding member for a new Korean game development studio called Thingsoft. In that capacity, I oversaw development of numerous mobile games. In 2013, Thingsoft was acquired by a subsidiary of Nexon Korea Corporation (“Nexon”), the plaintiff in this case. In 2018, Nexon dissolved Thingsoft and I started working for Nexon directly.

6. From 2018–2021, I worked in game development at Nexon on various games, all of which were cancelled or shelved and never publicly released.

7. The entire time I worked at Nexon, our office was located in Seongnam, a city in

1 Korea's Gyeonggi Province, near Seoul. I live in Seoul near Gangnam Station, about 10 km
2 from the Nexon office.

3 **NEXON AND THE "P3 PROJECT"**

4 8. When I began working at Nexon, I signed a written employment agreement. This
5 agreement was drafted solely by Nexon and presented to me to sign "as is." I do not have a copy
6 of that agreement any longer, but I have reviewed the copy of Mr. Choi's employment agreement
7 submitted in connection with this motion, and it looks to be the same as the agreement I
8 signed. In particular, my agreement had the same clause stating that any dispute relating to the
9 agreement shall be heard in district court in Korea.

10 9. I also signed an "Acknowledgment about Company IP" relating to the permissible
11 use of Nexon's intellectual property. This Acknowledgment was drafted solely by Nexon and
12 presented to me to sign "as is." That agreement included a clause stating that any dispute
13 relating to the agreement must be exclusively heard in Korean district court. A true and correct
14 copy of that Acknowledgment is attached as **Exhibit A**.

15 10. During my time at Nexon, I was the lead game designer for a development project
16 that we internally called the "P3 Project." I worked on the P3 Project, along with several other
17 Nexon employees, for less than one year. Nexon claims that the P3 team had 20 people on it—
18 but for most of the 11 months of the project's life, there were far fewer employees assigned to
19 work on the P3 Project. Development was slowed down in large part due to Nexon's
20 mismanagement and lack of faith in the project.

21 **IRONMACE AND DARK AND DARKER**

22 11. I joined Ironmace in October 2021. Our goal at Ironmace was to develop a first-
23 person, extraction game/dungeon crawler in a fantasy setting, which we named *Dark and*
24 *Darker*. From the outset, we hired a large and skilled team of designers and programmers to
25 help put the game together as efficiently as possible. Because we were a small indie studio, we
26 could work much more quickly than larger gaming studios that are slowed down by unnecessary

1 bureaucracy and politics. We could focus all our efforts just on making a great game.

2 12. Ironmace is headquartered in Seongnam, Korea. We have a little over 30 full-
3 time employees, who all live in Korea.

4 13. Our internal team communications are almost all in Korean. Because I was born
5 in the United States, I am comfortable speaking and writing in English, but the rest of my team
6 has much more limited familiarity with English. When our team writes internal emails to each
7 other, we do it in Korean.

8 14. The team strategy meetings where Ironmace planned out how to develop *Dark*
9 *and Darker* were conducted in Korean. When we took notes about our development of the
10 game, we wrote those notes primarily in Korean. The notes and records of our creative
11 development efforts will conclusively show that we developed *Dark and Darker* independently
12 of anything any members of our team had worked on while at Nexon.

13 15. The source code and programming notes showing how the game was built will
14 also confirm that we did not use any proprietary assets or code from Nexon in building *Dark and*
15 *Darker*. Our internal team notes that we used when programming *Dark and Darker* are all in
16 Korean.

17 16. To the extent any of the above records are maintained in hard copy, those
18 documents would be located in our office in Korea.

19 17. The computer systems we used to develop and program *Dark and Darker* are
20 physically located in our Korean office. The code/asset repository servers were physically
21 located in our Korean office until early 2023 when they were moved to a cloud hosting solution.

22 18. All of the work that I did on *Dark and Darker*, I did in Korea—either from my
23 home or from Ironmace's office.

24 19. Nexon has sued me, Mr. Choi, and Ironmace in Korean district court, claiming
25 that our work on *Dark and Darker* infringes Nexon's copyrights and unlawfully used Nexon's
26 trade secrets. These are the same allegations that Nexon makes against us in this U.S. Litigation.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.


Terence Seungha Park

EXHIBIT A

업무관련 지적 재산에 관한 권리확인서

주식회사 넥슨코리아(이하 "갑"이라 한다)와 박승하 (이하 "을"이라 한다)는 업무관련 지적재산의 권리 확인과 관련하여 다음과 같이 계약을 체결한다.

다 음

제 1 조 (목 적)

본 계약은 "을"이 "갑"의 직원으로 재직하면서 이루어지는 저작, 개발, 실연, 발명 등의 지적 재산 창출행위와 관련하여, 이와 관련된 "갑"과 "을"의 권리관계를 명확히 함을 목적으로 한다.

제 2 조 (용어의 정의)

1. "직무발명품"이란 "을"이 "갑"의 직원으로 재직하면서, 직무관련성이 있는 분야에 관하여, 업무와 관련하여 발명한 발명품을 말한다.
2. "업무저작물"이란 "을"이 "갑"의 직원으로 재직하면서, 직원으로서 업무를 수행하는 과정에서 이루어지는 작사, 작곡, 편곡, 실연, 집필, 편집, 디자인 등 기타 모든 창조적 행위에 의하여 발생하는 결과물을 말한다.

제 3 조 (발명 등의 자동승계 및 업무저작물의 권리확인)

1. "을"이 입사 후 수행한 직무발명 등이 이루어진 경우, 해당 "직무발명품"에 대하여 국내 또는 해외에서 지적재산권으로 등록 받을 권리는 그 발명 등이 이루어짐과 동시에 "갑"에게 자동 승계되는 것으로 본다.
2. 다만, "을"이 제3자와 공동으로 직무발명을 한 경우에는, "을"이 가지는 직무발명에 대한 국내 또는 해외에서 지적재산권으로 등록 받을 권리의 지분에 대하여, 그 발명 등이 이루어짐과 동시에 "갑"에게 자동 승계되는 것으로 본다.
3. "을"이 입사 후 업무 수행의 과정에서 만들어진 "업무상저작물"은 현행 저작권법 제 9 조에 의거하여 지적재산권(2차적 저작물 작성권, 편집 저작물 작성권, 저작 인접권 포함)등이 처음부터 "갑"에게 원시적으로 발생, 귀속되는 것임을 양당사자가 확인 한다.

제 4 조 (권리와 의무)

1. "갑"이 전 조 제 1 항의 권리를 "을"로부터 승계한 경우에는 사규에서 정하는 바에 따라 "을"에게 소정의 보상을 할 수 있다.
2. "을"은 본 계약이 체결된 이후에는, 직무상 발명 등이 이루어진 다음 "을"에게 이직 등의 사유가 발생한 경우, "을"은 "갑"의 회사 외에서는 "갑"이 승계한 발명등과 동일하거나 유사한 콘텐츠를 사용하거나 재창작할 수 없다.
3. "을"은 고용관계 계속 중에 "을"이 한 모든 발명을 "갑"에게 조서를 작성하여 통지하여야 하며, "갑"은 지체 없이 이를 확인시켜줄 의무가 있다.
4. "을"은 본 계약체결 이후, 본 직무발명에 대하여 별도의 권리를 주장할 수 없다.

제 5 조 (기타)

1. 본 계약에 정하지 않는 사항 및 양 당사자간 본 계약 해석상 이견이 있을 경우에는 일반 상관례 따라 해결하는 것으로 한다.
2. 본 계약과 관련하여 양당사자의 협의로 해결되지 않는 분쟁이 발생한 경우 서울중앙지방법원을 제 1 심 전속합의관할로 한다.
3. 양 당사자는 신의성실의 원칙에 따라 본 계약을 성실히 준수해야 하며, 계약서는 "갑"의 인사팀에서 보관한다.

2018 년 4 월 13 일

"갑"

주식회사 넥슨코리아

경기도 성남시 분당구 판교로 256번길 7

대표이사 이 정 현 (인)

"을"

생년월일 1978.11.01

성 명 박승하



소갑 제47-1호증

(인)

EXHIBIT B



James S. Blackburn
+1 213.243.4063 Direct
James.Blackburn@arnoldporter.com

March 22, 2023

VIA ELECTRONIC AND CERTIFIED MAIL

Valve Corporation
10400 NE 4th Street, Fl. 14,
Bellevue, WA 98004, United States.
dmca@valvesoftware.com

Re: Notice of Copyright Infringement and Misappropriation of Trade
Secrets

To Whom It May Concern:

We represent NEXON Korea Corporation ("Nexon"), a global producer, developer, and operator of video games specializing in online virtual world games for PCs, consoles, and mobile devices. Nexon has produced 150 games that are enjoyed by 1.4 billion users in 110 countries. We write to you to request, pursuant to the Digital Millennium Copyright Act (the "DMCA"), 17 U.S.C. Section 512, and your Steam Subscriber Agreement ("SSA") and Steam Online Conduct Rules ("SOCR"), that Valve Corporation ("Valve") remove all versions of the video game *Dark and Darker* from Valve's Steam Platform ("Steam").

This letter constitutes a notice of claimed infringement pursuant to the DMCA, better known as a DMCA "Takedown Notice." A formal DMCA Notice of Copyright Infringement, utilizing the form supplied on Valve's website,¹ is appended hereto as Exhibit A.

Nexon has learned that IRONMACE Co., Ltd. ("Ironmace") is making unauthorized use of Nexon's trade secrets and copyrighted material as detailed below. This letter is to inform you of Ironmace's misconduct, constituting misappropriation of Nexon's trade secrets and copyright infringement and to request that Valve take down all versions of *Dark and Darker* from Steam.

Since August 2022, Ironmace has been offering on Steam download demo/test versions of the videogame titled *Dark and Darker*, and Ironmace plans to make the game commercially available later in 2023. To date, Ironmace has conducted play tests of *Dark and Darker* on Steam but plans to move to "Early Access" distribution

¹ Available at <https://steamcommunity.com/dmca/create/>

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of *Dark and Darker* by late April or early May, which will make a near-final version of the video game available to purchasers.

Based on our investigation, *Dark and Darker* appears to have been built and developed using trade secrets as well as copyrighted information copied and stolen from Nexon. Under U.S. law, Ironmace's actions constitute, among other violations, misappropriation of Nexon's trade secrets such as source codes, art resources, build files, and other company intellectual property under the Defend Trade Secret Act (the "DTSA") and infringement of copyrighted materials such as Literary Work (e.g., source codes), Works of Visual Arts (e.g., character designs), and Motion Picture / AV Work (e.g., Playtest video) under the Copyright Act.

Nexon began developing a new first-person shooter role-playing game ("FPS-RPG game") also known as the *P3 Game* under the *P3 Project* in August 2020. For 11 months until July 2021, at least 20 Nexon employees worked exclusively on the *P3 Project* and Nexon invested more than KRW 1.1 billion (USD 815,000, using an exchange rate of USD 1 to KRW 1,350) to develop the *P3 Game*. During this time, Nexon made significant developments to the *P3 Game* and created unique concepts, genre, plot, story line, characters, and plans for the game. Nexon also created large numbers of proprietary source codes, art resources, and build files.

Literary Work, Works of the Visual Art, and Motion Picture / AV Work of the *P3 Game* are registered to Nexon and protected by the U.S. copyright law pursuant to Copyright Registration Nos.:

1. Project P3 Codes (computer program), Registration No. TXu 2-355-124;
2. Project P3 (audiovisual video game material), Registration No. PAu 4-169-661;
3. Project P3 Playtest (audiovisual material and spoken commentary), Registration No. PAu 4-166-909;
4. Project P3 Character – Cleric (2D artwork), Registration No. VAu 1-491-714;
5. Project P3 Character – Ranger (2D artwork), Registration No. VAu 1-491-715;
6. Project P3 Character – Barbarian (2D artwork), Registration No. VAu 1-491-716;
7. Project P3 Character – Tanker (2D artwork), Registration No. VAu 1-491-717;
8. Project P3 Character – Thief (2D artwork), Registration No. VAu 1-491-719; and
9. Project P3 Character – Wizard (2D artwork), Registration No. VAu 1-491-720.

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Among other things, the above copyright registrations confer upon Nexon the exclusive rights to reproduce, prepare derivative works, distribute, perform, display, and transmit the copyrighted material. The certificates of copyright registration are attached as Exhibit B.

In addition, Nexon took reasonable measures to maintain confidentiality of these source codes, art resources, and build files for the *P3 Game*. These measures include Nexon's data protection agreement,² data protection policy, security guidelines, and explicit verbal instruction that prohibited Nexon employees from disclosing confidential company information and Nexon's trade secrets (e.g., source codes, art resources, and build files) to third parties even after leaving Nexon, or using without authorization Nexon's confidential information and trade secrets for any purpose other than assigned work for Nexon.

We have learned that at least one Nexon employee – specifically, Ju-Hyun Choi (former Nexon employee and team leader of the *P3 Project* who had access to all the *P3 Project* files) – acquired and transferred, without authorization, more than 11,000 key build files of the *P3 Project* from Nexon's server to his personal server in 2020 and 2021.³ These 11,000 files include, but are not limited to, the source codes, art resources, and build files of the *P3 Game*. Ju-Hyun Choi's misconduct regarding the unlawful transfer and disclosure of over 11,000 build files related to the *P3 Project* is set out in Exhibit C. Upon discovery of his misconduct, Nexon disciplined and terminated Ju-Hyun Choi in July 2021.

Ju-Hyun Choi approached *P3 Project* members, urging them to leave Nexon and create a game similar to the *P3 Game* outside of Nexon. Additionally, Terence Seungha Park ("Terence Park") was a former director of game development at Nexon and the head of the sub-team for the *P3 Project*. At Nexon, he worked on the *P3 Game* with Ju-Hyun Choi and other Nexon employees who later joined Ironmace. Shortly after Ju-Hyun Choi was dismissed from Nexon, Terence Park left Nexon on August 9, 2021. Less than two months after Terence Park left Nexon and only three

² Terence Park and Ju-Hyun Choi both signed Nexon's Agreement for Commitment to Data Protection on August 5, 2021 and April 18, 2018, respectively.

³ Please note: (i) Choi misappropriated data related to *P3 Game*, which is now copyrighted by Nexon (PAu 4-169-661) and therefore forms the basis for a DMCA takedown notice, and Nexon has a good faith belief that *Dark and Darker* infringes the copyrighted *P3 Game*; (ii) Choi misappropriated *P3 Game* source codes, which have been copyrighted by Nexon (Txu 2-355-124) and therefore form the basis for a DMCA takedown notice, and there is a good faith belief that *Dark and Darker* was built using stolen source codes and infringe the copyrighted *P3 Game* source codes; and (iii) Choi misappropriated art resources from the *P3 Game* including the characters Barbarian, Cleric, Tanker (Fighter), Wizard, Thief (Rogue), and Ranger, which are now copyrighted by Nexon (VAu 1-491-714, VAu 1-491-716, VAu 1-491-715, VAu 1-491-717, VAu 1-491-719, and VAu 1-491-720, respectively), and therefore form the basis for a DMCA takedown notice, and there is a good faith belief that the characters such as barbarian, cleric, tanker (fighter), wizard, thief (rogue), and ranger, as shown in *Dark and Darker*, infringe the copyrighted art images in the *P3 Game*.



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months after Ju-Hyun Choi left Nexon, Terence Park founded Ironmace on October 20, 2021. Ju-Hyun Choi joined Ironmace shortly thereafter as its Managing Director. Choi is widely believed to be the controlling shareholder of Ironmace and has been actively engaged in fundraising efforts for the company. Ten out of twenty-three *P3 Project* team members left Nexon, and most are believed to be currently working at Ironmace.

We have reason to believe that Ju-Hyun Choi stole and misappropriated Nexon's trade secrets and copyrights and used them, along with Terence Park and Ironmace, in the development of the counterfeit game *Dark and Darker*. Moreover, as the founder of Ironmace and a former-*P3 Project* team member, Terence Park knew or should have known that Ju-Hyun Choi illegally stole Nexon's trade secrets and copyrighted materials to develop *Dark and Darker*. Terence Park and Ironmace thus have knowingly benefitted from Ju-Hyun Choi's misappropriation, and will continue to do so once *Dark and Darker* is made commercially available. In light of the aforementioned facts, Ironmace has misappropriated Nexon's trade secrets under the DTSA and infringed Nexon's copyrighted materials under the Copyright Act.⁴

Nexon's *P3 Game* has never been disclosed to a third party and, before the release of the testing version of *Dark and Darker*, no other game had the same concept, genre, and plot as the *P3 Game*. Within a mere ten months of forming Ironmace, its demo/test versions of *Dark and Darker* became publicly available in August 2022. It is impossible for Ironmace to have developed *Dark and Darker* in such a short timeframe without using Nexon's trade secrets and confidential information. Nexon became immediately concerned about the two games' similarities, which are so striking that they cannot be reasonably explained through independent development.

To investigate, Nexon conducted a comparative analysis of *Dark and Darker* and the *P3 Game*. *First*, a preliminary analysis revealed that the resource file names of 2,338 files were identical between the two games. Even if one takes into account that both games were developed using the same program (e.g., Unreal Engine), the number of identical file names is too substantial for mere coincidence. For your reference, the comparison of the file names is appended hereto as Exhibit D.

Second, the character designs and other setting and structural designs of *Dark and Darker* are suspiciously similar to those of the *P3 Game*. Both games showcase the same character class: Barbarian, Cleric, Tanker (Fighter), Wizard, Thief (Rogue), and Ranger. Furthermore, just as the *P3 Game* takes place in a dungeon with dark

⁴ Ironmace's misconduct is the subject of an ongoing criminal investigation in Korea. Recently, on March 7, 2023 the Korean police conducted a search and seizure of Ironmace's office in connection with the ongoing investigation of whether Ironmace unlawfully stole and used Nexon's *P3 Game* data to build *Dark and Darker*.



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brick walls (which is intended to portray a dark and fearful atmosphere) and introduces torch-related game features (which allow users to light up or extinguish the torches installed in the dungeons to increase or decrease visibility), *Dark and Darker* takes place in the same brick-walled dungeon setting with the same torch-related game features. It is no coincidence that the characters and setting of the games are aesthetically so similar; it is clear that Ironmace used Nexon's data to "create" the characters and setting in *Dark and Darker*. Even if, as Ironmace has argued in media statements, the graphic assets (including character designs) were purchased from the "Unreal Marketplace," it does not explain the numerous specific aspects of the characters in *Dark and Darker* characters that are different from that of the graphic assets available for purchase on Unreal Marketplace, but are identical to the aspects of the characters found in the *P3 Game*. The comparison of characters and setting / structural designs between *Dark and Darker* and the *P3 Game* is appended hereto as Exhibit E.

Third, the level and extent of similarities between the two games' key concepts, genre, and storyline make it clear that Ironmace must have used Nexon's trade secrets and copyrighted materials to create *Dark and Darker*. Both *Dark and Darker* and the *P3 Game* have the same story setting and even share an almost identical game description. For example, the premise of both games involves adventurers who delve into dungeons full of monsters and treasures in their quest to seek riches. Moreover, *Dark and Darker* has all the characteristics of the *P3 Game*, including the PvPvE genre; FPS and RPG elements; character class; game starting point; and user interaction with game features. For a more complete comparison, please see Exhibit E.

Based on the aforementioned, and in conjunction with our discovery of Ju-Hyun Choi's unlawful transfer of over 11,000 files related to the *P3 Project* from Nexon's server to his personal server, Nexon has a good faith belief that Ironmace's use of Nexon's trade secrets and copyrights described in this letter is not authorized by Nexon or any agent of Nexon under any applicable law. We, on behalf of Nexon, formally request that Valve immediately take down all versions of *Dark and Darker* from Steam because *Dark and Darker* is a game built on source codes, art resources, and build files unlawfully misappropriated and stolen from Nexon's *P3 Game*.

Please be advised that if Valve does not take down all versions of *Dark and Darker* on Steam, then Valve may be liable for direct and indirect copyright infringement, as the DMCA requires Valve to "respond[] expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity" upon proper notice in order to avoid liability itself for the infringing acts of its customers. 17 U.S.C. § 512(c)(1)(C).

Please note that the DMCA offers a defense, available only to copyright claims and not to claims of trade secret misappropriation. As described above,



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Ironmace misappropriated Nexon's trade secret information in the creation and development of *Dark and Darker*. Valve's SSA and SOCR prohibit the "use [of] any material or information . . . via Steam in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party." Nexon further requests that Valve remove *Dark and Darker* from Steam due to Ironmace's flagrant breach of the SSA and SOCR through its violation of Nexon's intellectual property rights in the creation and development of *Dark and Darker*.

Nothing in this letter should be construed as a waiver, relinquishment, modification or election of rights or remedies by Nexon. This letter is not an exhaustive statement of the relevant facts or law. Nexon expressly reserves all rights and remedies, including the right to seek injunctive relief and recover monetary damages, under all applicable federal and state laws.

Sincerely,



James S. Blackburn

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the United States of America that on this date, the foregoing document was filed electronically with the Court and thus served simultaneously upon all counsel of record.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on June 22, 2023.



Rondi A. Greer